

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

COREY DELMAR SMITH, 36307-177,	§	
Movant	§	
	§	
VS.	§	
	§	NO. 3:08-CV-1313-B and
UNITED STATES OF AMERICA	§	3:07-CR-135-B(04)
	§	ECF
Respondent.	§	

ORDER

On May 22, 2008, Corey Delmar Smith plead guilty and was sentenced for bank fraud and aiding and abetting in violation of 18 U.S.C. §§ 1344 and 1342. On May 29, 2008, Smith filed a notice of appeal. That appeal is currently pending. *United States of America v. Corey Delmar Smith*, No. 08-10518)(5th Cir. 2008). Subsequent to filing that appeal, Smith began filing a series of motions and other correspondence with this Court under two different case numbers seeking to correct, vacate, set-aside or otherwise collaterally attack his convictions and obtain his release from prison.

On July 30, 2008, Smith filed a Motion to Vacate under 28 U.S.C. § 2255 (CV case doc #1, CR case doc # 265). The motion was referred United States Magistrate Judge Stickney. This Court has considered the record in this case, the Magistrate Judge's recommendations (CV case doc #8), and Smith's September 12, 2008 Response to those recommendations (CV case doc #9). In accordance with and for the reasons provided within the Findings, Conclusions and Recommendations of the United States Magistrate Judge filed with this Court on September 3, 2008, the Motion to Vacate (CV case doc #1, CR case doc # 265) is DISMISSED without prejudice.


Additionally, Smith filed a Petition for Expedited Review (CR case doc # 269) on August 20, 2008, another Petition for Expedited Review (CR case doc #272) on August 26, 2008, and a third Petition for Expedited Review on September 2, 2008 (CV case doc #7). Each of these filings asserts that Smith's sentence violates the U.S. Constitution and was improperly calculated. Smith filed a document entitled Amended to Motion (CR case doc #283) on September 15, 2008 citing various federal laws and cases, but containing no analysis and no reference to any previous filing. Also on September 15, 2008, Smith filed a document entitled Actual Innocence (CV case doc #10) seeking to have the indictments dismissed because "no reasonable Fact-Finder would have found Petitioner guilty on alleged charges." Smith filed a document entitled Actual Innocence (CV case doc #11) on September 17, 2008 in which he moves for "immediate release from the custody of the Bureau of Prisons." Smith went on to file two more documents entitled Actual Innocence in which he attacked his convictions on various grounds on September 17, 2008 (CV case doc # 12) and September 18, 2008 (CV case doc #14).

By these filings, Smith seeks to attack his convictions while his case is being considered on direct appeal to the Fifth Circuit. The Court considers all of the filings described in the previous paragraph to be frivolous in light of the fact that Smith's convictions are already pending appeal before the Fifth Circuit Court of Appeals. Accordingly, all of the filings in the previous paragraph are ordered to be STRICKEN as frivolous (CV case doc #7, CV case doc #10, CV case doc #11, CV case doc # 12, CV case doc #14, CR case doc # 269, CR case doc #272, CR case doc #283). Smith is instructed that any further frivolous filings will be stricken and Smith may be subject to sanctions, which may include monetary sanctions to be paid out of his prisoner trust account, if necessary.

Furthermore, Smith filed two applications to proceed *in forma pauperis* on August 22, 2008 (CV case doc #6, CR case doc #270) and September 17, 2008 (CV case doc #13). Because all of Smith's pending filings in this cause have been dismissed or stricken, the two applications to proceed *in forma pauperis* in these proceedings are DENIED AS MOOT.

SO ORDERED.

DATED: September 26, 2008



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE